Supreme Court, U.S.
FILED

No. 03-1536 MAY 11 2004

OFFICE OF THE CLERK

In The

Supreme Court of the United States

DARNELL BYRON WATSON,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. WHETHER USE OF STATEMENTS STEMMING FROM A CUSTODIAL INTERROGATION CONSTITUTES A VIOLATION OF THE PRIVILEGE AGAINST SELF-INCRIMINATION, UNLESS THE PROSECUTION CAN DEMONSTRATE THE PROSECUTORIAL SAFEGUARD OF *MIRANDA V. ARIZONA*, 384 U.S. 436 (1966), AND WARRANTS SUPPRESSION OF THOSE STATEMENTS AND THEIR FRUITS UNDER THE UNITED STATES CONSTITUTION'S FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION AND TO DUE PROCESS AND UNDER THE SIXTH AMENDMENT RIGHT TO COUNSEL?

2. WHETHER FRUITS OF NON-*MIRANDIZED* QUESTIONING LEADING TO A NON-*MIRANDIZED* CONSENT TO SEARCH REQUIRE SUPPRESSION OF THE FRUITS OF THAT SEARCH UNDER THE UNITED STATES CONSTITUTION'S FOURTH AMENDMENT RIGHT AGAINST ILLEGAL SEARCH AND SEIZURE, FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION AND TO DUE PROCESS AND THE SIXTH AMENDMENT RIGHT TO COUNSEL?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, DARNELL BYRON WATSON, respectfully prays that a Writ of Certiorari issue to review the denial of his Petition for Review by the California Supreme Court filed January 30, 2004 which upheld the judgment of the Court of Appeal of the State of California, Second Appellate District, Division Six.

OPINIONS BELOW

The opinion for which review is sought is People of the *State of California v. Darnell Byron Watson*, California Supreme Court Case No. S122370 (January 30, 2004) (Appendix A), which refused to review the denial of rehearing by the Court of Appeal of the State of California, Second Appellate District, Division Six, Case No. 2d Crim. B165185 (Appendix B), which refused to review the opinion of the Court of Appeal of the State of California, Second Appellate District, Division Six, Case No. B165185 (Appendix C) which affirmed the decision of the trial court.

JURISDICTION

Petitioner invokes the jurisdiction of this court under 28 U.S.C. § 1254 (1).

On March 4, 2004, the California Supreme Court entered its decision upon denial of a petition for review.

CONSTITUTIONAL PROVISIONS AND STATEMENTS INVOLVED

The Fourth Amendment of the United States Constitution states in part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. . . . "

The Fifth Amendment of the United States Constitution states in part: "[N]or shall any person . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . . "

The Sixth Amendment of the United States Constitution states in part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defence."

STATEMENT OF THE CASE

Three police officers arrested and questioned petitioner, without any intention of *Mirandizing* him, and from their questioning learned that he might have a vehicle somewhere nearby. This caused them to search for and ultimately find the vehicle. Without this information, they would have had no reason to search for the vehicle where ultimately contraband was found. A police officer testified that after the vehicle was found and prior to its search Petitioner consented to the search. Petitioner denied doing so. Much later, Petitioner was given the *Miranda* advisement and refused to waive his rights.

On December 10, 2002, a two-count information was filed in Los Angeles County, California which charged Petitioner Darnell Byron Watson with theft of access cards, attempted grand theft in violation of California Penal Code Sections 484e(b) and 484g(a) and 644. Watson plead "not guilty" to the information.

On December 27, 2002, Watson filed a motion to suppress evidence under Penal Code Section 1538.5 alleging that he was subjected to an arrest without probable cause, illegal search of his person and vehicle and police questioning without prior *Miranda* warnings. On January 9, 2003, the motion was denied after a hearing.

On February 10, 2003, Watson withdrew his plea of "not guilty" and entered a "no contest" plea to theft of access cards. The Court imposed a two-year state prison sentence, stayed its imposition, and executed a Certificate of Probable Cause authorizing Watson's appeal of the denial of his motion to suppress evidence.

The evidence addressed at the suppression hearing is as follows:

On October 2, 2000, Los Angeles Police Department officers responded to a call from Rydell Automotive Group in Northridge, California that a man was there requesting to pick up merchandise ordered several days earlier by a woman using a forged credit card.

Ten minutes later the police arrived at Rydell and spotted Watson standing outside the door to the store. The officers, dressed in street clothes, pulled out their badges and with guns drawn approached Watson. They told him to put his hands up and then handcuffed him. Watson did not receive *Miranda* rights at the time of his arrest nor any

time during the subsequent interrogation by the arresting officers.

Once Watson was handcuffed, the officers performed a pat-down search that did not uncover any weapons but did yield a set of rental car keys with a tag identifying the vehicle and its License Number NXM348. The policemen asked where Watson's vehicle was parked and who accompanied him. Watson replied that he had driven there alone, then stated he walked to the location. One officer did not believe Watson walked there and began to search the surrounding lot. He assumed that the female who had originally purchased the merchandise might be waiting in the car. Two officers placed Watson in an unmarked police car and removed him from the area. Diamond located the rental car approximately fifty yards from Rydell parts department behind a brick wall in the Rydell Chevrolet service bay area. There was nobody in the vehicle. Detective Diamond testified that he looked through the car windows and saw on the center console a small green substance resembling marijuana, mail on the seat in Watson's name, and an open black bag with an envelope containing what appeared to be a large amount of currency. Although Diamond purported to see contraband in plain view, he contacted the other two officers directing them to bring Watson back in order to get Watson's consent to search.

At the suppression hearing, Detective Diamond represented that Watson consented to the search of his rental car which contained, among other things, several credit cards in other people's names. Watson testified that no contraband was visible from the exterior of his rental car, that he never consented to the search and that when he finally received *Miranda* warnings at the police station,

he refused to waive his rights. Watson also testified that the officers threatened to "pencil-fuck" him if he did not corporate.

ARGUMENT

1. THE USE OF STATEMENTS STEMMING FROM A CUSTODIAL INTERROGATION CONSTITUTES A VIOLATION OF THE PRIVILEGE AGAINST SELF-INCRIMINATION, UNLESS THE PROSECUTION CAN DEMONSTRATE THE PROSECUTORIAL SAFEGUARD OF *MIRANDA*, AND WARRANTS SUPPRESSION OF THOSE STATEMENTS AND THEIR FRUITS UNDER THE UNITED STATES CONSTITUTION'S FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION AND TO DUE PROCESS AND THE SIXTH AMENDMENT RIGHT TO COUNSEL.

Three police officers approached Watson at Rydell Automotive with their guns drawn, placed him in handcuffs and began questioning him. The parties stipulated that Watson did not receive *Miranda* warnings following his arrest. The situation can be viewed as nothing less than an intentional failure to advise Watson of his *Miranda* rights. This is not what police officers exercising ordinary care and prudence do.

Assuming that Watson was lawfully arrested, he was not *Mirandized* and custodial questioning began involving how he arrived at Rydell Automotive. Respondent's Brief on Appeal contended: "[Watson's] evasive and contradictory answers with respect to how he got to the Rydell establishment reasonably led the officers to believe that

[Watson's] rental car was nearby." Respondent thus *conceded* that the officers' violation of *Miranda* led to the search for and eventual discovery of Watson's rental car.

Miranda warnings are required whenever an individual is interrogated after being "taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona* 384 U.S. 436, 444 (1966).

Failure to administer *Miranda* warnings creates a presumption of compulsion that requires exclusion of statements that may otherwise be voluntary within the meaning of the Fifth Amendment. *Oregon v. Elstad* 470 U.S. 298, 307 (1985).

Watson's case is almost identical to that in *United States v. Patane*, 304 F.3d 1013 (10th Cir. 2002), *cert. granted*, ___ U.S. ___ (Docket No. 02-1183) *argued*, December 9, 2003. *Patane* was arrested and handcuffed at his apartment, but was not given a full *Miranda* advisement. In response to questioning, he revealed the location of a gun, which the police retrieved later charging him with being a felon in possession of a gun. The Tenth Circuit held that the physical evidence (gun) should be suppressed due to the *Miranda* violation under the "fruits of the poisonous tree" doctrine. This Court has heard argument in *Patane* and two other cases involving *Miranda* warnings this term.

Miranda warnings are constitutionally based and immune from congressional abrogation. *Dickerson v. United States*, 530 U.S. 428, 440 (2000) . Thus, the police's failure to give Watson his *Miranda* rights is a violation of a constitutional right. It is imperative that this Court address this issue.

It is questionable to treat *Miranda* violations differently from immunized testimony and involuntary confessions since all are part of Fifth Amendment jurisprudence. The circumstances underpinning Watson's non-*Mirandized* questioning, followed by his later refusal to waive his *Miranda* rights, establishes that Watson's answers were coerced in violation of his right against self-incrimination, his right to counsel and his right to due process.

2. FRUITS OF NON-*MIRANDIZED* QUESTIONING LEADING TO A NON-*MIRANDIZED* CONSENT TO SEARCH REQUIRE SUPPRESSION OF THE FRUITS OF THAT SEARCH UNDER THE UNITED STATES CONSTITUTION'S FOURTH AMENDMENT RIGHT AGAINST ILLEGAL SEARCH AND SEIZURE, FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION AND TO DUE PROCESS AND THE SIXTH AMENDMENT RIGHT TO COUNSEL.

This case presents a stronger case for suppression of fruits than does *Patane, supra.* Patane was given incomplete *Miranda* warnings, which he interrupted, and upon questioning revealed that he possessed a gun, gave its location and then consented to a search for the gun. Here, Watson was not given *Miranda* warnings and upon questioning presented information sufficient to cause the police to initiate a search for his vehicle which they found. They then approached Watson a second time and without *Mirandizing* him purportedly obtained his consent to search the vehicle. Watson refused to waive *Miranda* when it was eventually given. Thus, Watson, unlike Patane, did not admit an offense and the failure by the police to administer the *Miranda* advisement on two

occasions can only be deemed intentional and not negligent.

The Court is well aware from recent cases of police officers in California who acted shamefully and ruthlessly to violate *Miranda's* requirements in order to obtain an advantage. Such actions call out for a bright line rule making intentional violations of *Miranda* subject to exclusion instead of admissibility restraints.

In this case the police willfully disregarded *Miranda.* They had no intention of complying with its warning requirements. That is because they knew they had little to lose. Any statement that is damaging to Watson can be used for impeachment, and if they obtained an incriminating statement through their threats to falsify police reports, they could force Watson not to testify at trial. Alternatively, they could give belated *Miranda* warnings in an effort to get a usable incriminating statement since Watson would have provided a statement prior to being *Mirandized.*

It is time that something be done to rein in police abuse of *Miranda*. Exclusion of fruits flowing from intentional violations of *Miranda* when coupled with a second failure to *Mirandize* prior to seeking consent to search such as occurred in this case would be a small, but important, first step.

CONCLUSION

For the foregoing reasons, certiorari should be granted.

DATED: May 11, 2004

Respectfully submitted,

LAW OFFICES OF
W. MICHAEL MAYOCK

W. MICHAEL MAYOCK
Attorney for Petitioner
DARNELL BYRON WATSON

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DARNELL BYRON WATSON,

Defendant and Appellant.

2d Crim. No. B165185
(Super. Ct. No. PA042517)
(Los Angeles County)

(Filed Dec. 24, 2003)

Meredith C. Taylor, Judge

Superior Court County of Los Angeles

W. Michael Mayock, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, William T. Harter, Supervising Deputy Attorney General, Marc E. Turchin, Deputy Attorney General, for Plaintiff and Respondent.

Darnell Byron Watson appeals a judgment of conviction entered after his nolo contendere plea to theft of access cards. (Pen. Code. § 484e, subd. (b).)[1] We conclude that the trial court properly denied Watson's motion to suppress evidence, and affirm.

FACTS

I.

On September 30, 2002, an employee of an automotive parts store in Northridge informed police officers that a woman had ordered automotive parts and paid for them with a fraudulently obtained credit card. Police Officer Marc Diamond investigated and learned that the credit card owner lived in Ventura County. He then received information from the Ventura County Sheriff regarding loss of the credit card and the theft victim's "identity theft."

Two days later, the automotive parts store employee again telephoned police officers to report that a man was at the store to obtain the previously ordered parts. The employee described the man and the clothing he wore. Shortly thereafter, Police Officers Diamond, Holmes, and Bertsch arrived at the store. They saw defendant Watson standing in the doorway. Watson was wearing the clothing the employee described.

The officers drew their firearms, arrested, and handcuffed Watson. Officer Holmes then conducted a pat-down search and found Enterprise Rental automobile keys in

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[1] All statutory references are to the Penal Code.

Watson's pocket. The keys had a tag stating the automobile's license plate number and describing the automobile as a gray Buick. The officer also found Watson's identification which showed a Camarillo or Port Hueneme address.

The officers questioned Watson concerning the rental automobile. He responded inconsistently that he either walked to the automotive parts store or that he drove there.

Officer Diamond checked the parking lot and found the rental automobile behind the service bay area. He believed that a female accomplice might be waiting inside the automobile. Diamond looked inside through the untinted windows. He saw a green leafy substance resembling marijuana on the center console, mail addressed to Watson on the front seat, and a large amount of currency in a bag in the back seat. Other police officers brought Watson to the rental automobile. Diamond asked Watson "how much money he had in the car and if [there was] anything else [he] needed to worry about." Watson replied no, and then consented to a search of the automobile.

The search yielded approximately $10,000 in currency, marijuana in the ashtray and driver's side pocket panel, and credit cards in the names of other persons in the pocket panel. The officers also found pay and owe sheets, and a scanner used the scan and store credit card numbers.

Watson testified at the suppression hearing that he was arrested by the police officers and thereafter did not consent to a search of his pockets or of the rental automobile. He stated that the officers threatened to "pencil fuck[]" him if he did not cooperate. He believed this meant that they would do as they wished regarding his arrest.

Watson testified that the marijuana and currency were not visible from the exterior of the automobile. He stated that his mail and money were in a closed laptop computer bag. Watson testified that he did not know that marijuana or stolen credit cards were inside the automobile.

The parties stipulated that the police officers did not advise Watson of his constitutional rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436.

II.

The trial court denied the suppression motion. It specifically found that the marijuana and currency were in plain view and that Watson consented to the search. The court expressly found that Watson was not a credible witness, based in part upon his demeanor while testifying and his lack of recall regarding "how he got [to the automotive parts store]."

Watson then entered a nolo contendere plea to theft of access cards. (§ 484e, subd. (b).) The trial court sentenced him to a two-year prison term, which it stayed pending resolution of this appeal.

Watson appeals. (§ 1538.5, subd. (m) [appeal of denial of suppression motion after guilty plea].) He contends that: 1) police officers did not have probable cause to arrest him; 2) he did not consent to a search of his automobile; and 3) his statements are inadmissible because police officers did not give *Miranda* warnings.

DISCUSSION

I.

Watson argues that police officers arrested him without probable cause because they had no reasonable belief that he committed a criminal offense. (*People v. Price* (1991) 1 Cal.4th 324, 410 [probable cause to arrest exists when a person of ordinary care and prudence holds an honest and strong suspicion that the arrestee has committed a crime].) He asserts that police officers had no information to connect him to the woman who ordered the automotive parts or to her fraudulent use of a credit card. He points out that the investigating police officer did not telephone the number provided by the woman who ordered the automotive parts. Watson contends that he may have been "a mere messenger or someone performing a favor." He concludes that the rental automobile keys and his statements are therefore inadmissible.

Well-settled principles govern appellate review of a motion to suppress evidence. (*People v. Ayala* (2000) 23 Cal.4th 225, 255.) We defer to the trial court's express and implied factual findings, if supported by sufficient evidence. (*Ibid.*; *People v. Glaser* (1995) 11 Cal.4th 354, 362.) In determining the constitutional reasonableness of a search, however, we apply our independent judgment. (*People v. Glaser, supra*, 11 Cal.4th 354, 362.) "Under California law, issues relating to the suppression of evidence derived from police searches and seizures must be reviewed under federal constitutional standards." (*People v. Robles* (2000) 23 Cal.4th 789, 794.)

Probable cause to arrest exists when the factual circumstances lead a prudent person to hold an honest and strong suspicion that the arrestee is guilty of a crime.

(*Maryland v. Pringle* (2003) 540 U.S. ___, ___ [probable cause deals with probabilities and depends on the totality of circumstances]; *People v. Price, supra*, 1 Cal.4th 324, 410.) The rule of probable cause to arrest is "'a practical, non-technical conception.'" (*Gerstein v. Pugh* (1975) 420 U.S. 103, 112.) A police officer may hold a reasonable suspicion of criminal conduct although an innocent explanation of the circumstances may exist. (*People v. Superior Court (Wells)* (1980) 27 Cal.3d 670, 674, fn. 3 ["'The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct.'"].)

The trial court properly found that the police officers had probable cause to believe that Watson was involved in credit card fraud. Officer Diamond received information that a woman had ordered automotive parts and paid for them with a fraudulently obtained credit card. Diamond reviewed information sent to him by the Ventura County Sheriff regarding the victim's "identity theft." Two days later, the automotive parts store employee telephoned police officers and informed them that a man was at the store to obtain the ordered parts. The employee described the man and his clothing. When police officers arrived at the store, Watson stood in the doorway. He matched the physical description that the employee provided. The police officers reasonably believed from this information that Watson was involved in credit card fraud.

Although a possibility existed that Watson was a mere messenger or a friend performing a favor, the possibility of an innocent explanation does not deprive the police officers of the reasonable belief that Watson was involved in a crime. (*People v. Superior Court (Wells), supra*, 27 Cal.3d 670, 674, fn. 3.) The factual circumstances here would lead

a prudent person to hold a strong suspicion that Watson committed or was committing a crime. (*Id.*, at p. 674.)

Having lawfully arrested Watson, the police officers could lawfully search him to disarm him and to discover evidence. (*Illinois v. Lafayette* (1983) 462 U.S. 640, 644 [a search incident to a lawful arrest requires no additional justification].) "'*It is the fact of the lawful arrest which establishes the authority to search*. . . . [I]n the case of a lawful custodial arrest *a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.*'" (*Id.*, at p. 645.)

II.

Watson argues that he did not voluntarily consent to the search of the automobile because he was arrested without probable cause. (*People v. James* (1977) 19 Cal.3d 99, 109, disapproved on other grounds by *People v. Haskett* (1982) 30 Cal.3d 841, 857, fn. 6 [consent to search involuntary where defendant arrested without probable cause].) He adds that he did not receive warnings pursuant to *Miranda v. Arizona, supra*, 384 U.S. 436 prior to consenting. (*People v. Superior Court (Keithley)* (1975) 13 Cal.3d 406, 411-412 [consent involuntary when obtained during interrogation without *Miranda* warnings].) Watson also contends that his consent was involuntary because the police officers threatened to "pencil fuck" him if he did not cooperate.

The question of the voluntary nature of a defendant's consent to search is a factual one to be determined by the trial court. (*People v. James, supra*, 19 Cal.3d 99, 107.) We defer to the express and implied findings of the trial court

if they are supported by sufficient evidence. (*Ibid.* [consent voluntary although defendant handcuffed, arrested by three armed officers, and not advised of *Miranda* rights].)

Here the trial court found that Watson consented to a search of the rental automobile. The trial court expressly found that police officers did not threaten Watson and that Watson was not a credible witness. Moreover, the officers were not required to give *Miranda* warnings prior to obtaining Watson's consent to search. (*People v. Nelson* (1985) 166 Cal.App.3d 1209, 1214 ["No *Miranda* warning [is] necessary to obtain a consent to search [because] consent to search is not a Fifth Amendment waiver"].)

Consent aside, the police officers could lawfully search the automobile because they saw contraband inside by looking through the automobile windows. (*Pennsylvania v. Labron* (1996) 518 U.S. 938, 940.) "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." (*Ibid.*)

III.

Watson contends that evidence of his statements, including his consent to search, is inadmissible because the police officers did not provide *Miranda* warnings. In view of our discussion concerning probable cause to arrest and the reasonableness of the search of Watson and the rental automobile, it is not necessary to resolve this issue.

We affirm the judgment and vacate the stay of imprisonment.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, vs. DARNELL WATSON, Defendant.	CASE NO. PA 042517 ORDER PENAL CODE SEC. 1237.5

(Filed Feb. 10, 2003)

GOOD CAUSE having been shown under Penal Code Sec. 1237.5 that the defendant has reasonable constitutional grounds, including asserted violations of the Fourth and Fifth Amendments to the United States Constitution, for appellate review of the legality of the proceedings in the above-entitled case, it is therefore certified that there is probable cause for appeal of the denial of defendant's motion to suppress evidence.

Dated: February 10, 2003

/s/ Meredith C. Taylor
JUDGE OF THE
SUPERIOR COURT

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 6

January 16, 2004

THE PEOPLE
Plaintiff-Respondent

v.

WATSON, DARNELL
Defendant-Appellant

B165185
Los Angeles County No. PA042517

THE COURT:

Petition for rehearing is denied.

cc: All Counsel
File

Court of Appeal, Second Appellate District,
Division Six – No. B165185
S122370

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

DARNELL BYRON WATSON, Defendant and Appellant

(Filed Mar. 3, 2004)

Petition for review DENIED.

/s/ GEORGE
Chief Justice